

# **STATE PROPERTIES COMMITTEE MEETING**

**TUESDAY, NOVEMBER 10, 2009**

The meeting of the State Properties Committee was called to order at 10:01 a.m. by Chairman Robert Griffith. Other members present were John Ryan representing the Rhode Island Department of Administration; Richard Woolley representing the Rhode Island Department of Attorney General; John A. Pagliarini, Jr., Public Member; and Xaykham Khamsyvoravong representing the Rhode Island Office of the General Treasurer, Ex-officio Member. Others in attendance were Anthony Paolantonio from the Rhode Island House of Representatives; Meredith Pickering from the Rhode Island Senate Fiscal Office; Michael D. Mitchell from the Rhode Island Department of Administration; Michelle Sheehan from the Rhode Island Department of Environmental Management; Paul Carcieri, Charles Wick, William McCarthy, David Coppotelli, Colleen Kerr and Richard Kalunian from the Rhode Island Department of Transportation; Joshua L. Celeste from the law firm of Duffy & Sweeney.

Chairman Griffith stated for the record that the State Properties Committee did have a quorum present.

ITEM A – Department of Administration – A request was made for approval of and signatures on Purchase and Sale Agreement by and between P.J.C. Realty Company, LLC and the State of Rhode Island, acting through the Department of Administration, for the acquisition of property located at 50 Service Avenue in the City of Warwick. By way of background, Mr. Ryan explained that on November 14, 2008,

the State Properties Committee approved the Department of Administration's request for permission to advertise a Request for Proposals for the acquisition of a commercial office building to house a State centralized data center. The Request for Proposals was advertised in December 2008, through January 2009. The Department returned to the Committee with its successful respondent, P.J.C. Realty Company, LLC, and the property located at 50 Service Avenue in the City of Warwick. Mr. Ryan stated that on January 22, 2009, the Committee approved the Department's request for permission to initiate negotiations with P.J.C. Realty Company, LLC relative to an agreeable purchase price. After a rather lengthy negotiation process, the parties have agreed upon a purchase price of \$4,500,000. Mr. Ryan indicated that Attorney Michael Mitchell has worked diligently with both Richard Woolley and the attorney representing P.J.C. Realty Company, LLC to prepare the Purchase and Sale Contract before the Committee today. Mr. Ryan noted that he provided the Committee with a property information booklet which includes a detailed description of the property, floor plans, aerial photographs and photographs of the exterior and interior of the building. Mr. Ryan explained that the Department intends to relocate its Information Technology ("IT") operation, which is presently located on Hartford Avenue in the Town of Johnston, as well as IT personnel presently working from other departments. If there is additional room available, the Department intends to move other agencies to said property; however, they would have to be compatible with the IT operation, as the Department wants to avoid excessive foot traffic in this building.

**Mr. Mitchell provided the Committee with copies of the Purchase and Sale Contract. Mr. Mitchell indicated that said Contract was executed by the property owner yesterday, November 9, 2009, and sent via overnight mail for execution by Director Sasse of the Department of Administration; however, as the Director has been in meetings all morning, approval of the Contract would be subject to the Director's execution of the same. Mr. Mitchell explained that the Purchase and Sale Contract before the Committee is a standard form, which has been used in numerous previous transactions and has been modified to suit the terms and conditions of this acquisition. The Contract stipulates that a closing of the property shall be accomplished on or before February, 2010. Mr. Mitchell explained that there are some items of personal property that are identified in Exhibit B of the Contract. Said items consist of interior cubicle structures and necessary wiring, which will be included in the sale of the property. A motion was made to approve the Purchase and Sale Contract subject to execution by Director Sasse by Mr. Woolley and seconded by Mr. Kay.**

**Passed Unanimously**

**Chairman Griffith stated that the State Properties Committee will hear Item F out of sequence.**

**ITEM F – Department of Transportation – A request was made for approval of and signatures on a Lease Agreement by and between the Department of Transportation and Capitol City Events, LLC for thirty (30) parking spaces beneath the new Route 195 in the City of Providence. Mr. Carcieri explained that on or about May 26, 2009, the**

Department of Transportation appeared before the State Properties Committee seeking approval to enter into a Lease Agreement with Mr. Anthony Izzo, whose corporate identity is Capitol City Events, LLC. The Lease Agreement is necessary from the Department's point of view, because of an ongoing lawsuit initiated by Mr. Izzo alleging that the Department failed to compensate him for the condemnation of property for the I-195 Relocation Project. In order to avoid defending said litigation, the Department is willing to afford Mr. Rizzo a License Agreement for use of approximately thirty (30) vehicle parking spaces in a 'garage' constructed beneath the new I-195. Mr. Carcieri explained that Mr. Rizzo is the entrepreneur of several nightclubs in the area and has expressed interest in utilizing the subject property for valet parking for these establishments. The Lease Agreement provides for a term of fifteen (15) years. A fair market rental fee of \$2,445 per month has been assessed and will be subject to re-evaluation at the end of the sixth (6th) year based upon the CPI. In addition to the Lease Agreement, Mr. Carcieri noted that there is an Escrow Agreement and a Settlement Agreement both assented to by Mr. Izzo and the Department of Transportation. Mr. Carcieri introduced Joshua L. Celeste, legal counsel for Capitol City Events, LLC. Mr. Carcieri directed the Committee's attention to the last sentence of the submission memorandum wherein it states that in the event the Agreements are approved and executed by the Committee, they will be held in escrow by the State Properties Committee and will not be released until such time as the Department has made the statutorily mandated offering of the Lease Agreement to the

property's former owner and to the municipality required in accordance with 37-7-3 of the Rhode Island General Laws and until the final comments of the federal review of the Lease Agreement are received. Mr. Wick explained that in 2004, Mr. Izzo filed a lawsuit against the Department and a third party, Chestnut Properties, to obtain the benefits of a ninety-nine (99) year Lease Agreement that Mr. Izzo had on a portion of the property that the Department condemned for the I-195 Relocation Project. Said Lease Agreement was recorded and is on record with the City of Providence. Mr. Izzo's action sought to enforce his rights under said Lease Agreement. Since 2004, the parties have been attempting to settle the claim and in the spring of 2009, through Mr. Celeste, the parties finally reached a mutually agreeable resolution. Mr. Wick stated that Mr. Izzo's claim against the Department is very strong. The value of the ninety-nine (99) year Lease Agreement has been established at between \$300,000 and \$500,000. However, if Mr. Izzo is successful in obtaining a judgment against the Department, he would also be seeking any and all expenses incurred since 2004, in seeking additional parking for his businesses, which could easily amount to \$100,000 or more. Therefore, the Department is receiving a significant value in exchange for relinquishing very little for a complete dismissal of the lawsuit. Mr. Wick explained that the Department is affording Mr. Izzo a Lease Agreement for thirty (30) parking spaces in an alternative location, as the property originally leased is no longer available due to the I-195 Relocation Project. Mr. Wick reiterated that Mr. Izzo will pay fair market rent for these thirty (30) parking spaces. Mr. Wick stated that

the third party, Chestnut Properties, will pay the sum of \$45,000 to Mr. Izzo in full and final settlement of this matter. Mr. Ryan asked if the former owner of the subject property is Providence Steamboat. Mr. Carcieri stated that Providence Steamboat is the former owner of a portion of the subject property. Mr. Carcieri explained that the City of Providence is a partial owner of what has become the parking garage and Providence Steamboat formerly owned a portion of the property as well; therefore, the Department will provide notice of its intent to enter into the Lease Agreement to both the City and Providence Steamboat. Mr. Ryan noted that the rental fee works out to be \$84.83 per square foot for structured parking and asked if the City and Providence Steamboat will be offered the same terms and shall include the release and dismissal of the legal action against the State of Rhode Island; therefore, if the former owners wish to exercise their right of first refusal, they will be obligated to provide the Department of Transportation with a release of Mr. Izzo's lawsuit. Mr. Carcieri stated that said terms are featured in the last provision of the Lease Agreement. Mr. Ryan stated that he is confused by the language used in the Settlement Agreement; noting that the Settlement Agreement states: "Pursuant to the Lease, upon termination thereof, Chestnut Properties shall pay Mr. Izzo the sum of \$50,000, the termination sum and shall provide substitute parking for Mr. Izzo at another location suitable to Mr. Izzo with the same number of parking spaces as provided under the Lease for the balance of the Lease's term." Mr. Ryan noted that the Department is entering into a fifteen (15) year Lease Agreement with Mr. Izzo in order to avoid litigation,

but said language seems to refer to the balance of the ninety-nine (99) year Lease Agreement. Mr. Ryan asked Mr. Wick to clarify the intent of said language. Mr. Woolley explained said language refers to the terms and conditions under the old lease agreement, of which the Committee was not provided a copy. Mr. Wick indicated that Mr. Woolley's clarification is exactly correct. After reviewing the footprint of the garage, Mr. Ryan asked how the Department intends to monitor the remaining portion of the garage still owned by the State as it will have no control over who parks within the garage at least for the time being. Mr. Carcieri stated that the Department will attempt to mitigate potential encroachments by securing access. Mr. Carcieri indicated that Capital City Events will secure all access to the garage and provide a pass key to the Department. Mr. Carcieri stated that the Department is seeking to advertise the other thirty (30) spaces via a Request for Proposals in the near future; thereby acquiring another presence along side Capitol City Events, LLC. Mr. Ryan asked if Mr. Izzo enjoyed both daytime and nighttime parking at the site under the ninety-nine (99) year lease. Mr. Wick indicated that Mr. Izzo was permitted to park during both daytime and nighttime hours. Mr. Woolley asked Mr. Carcieri to provide some information concerning the federal review of the Lease Agreement. Mr. Carcieri explained that because the property is part of an interstate, the Lease Agreement and related documents require federal review. Mr. Carcieri stated that the documents were forwarded to the FHWA approximately three (3) weeks ago. Mr. Carcieri indicated that he spoke to a representative of the FHWA as recently as last Thursday,

November 5, 2009. The FHWA represented that it is in agreement, in principle, with the Lease Agreement and the related documentation; however, said representation has not been provided to the Department in the form of a written memorandum as of yet. Mr. Woolley asked what will happen if the FHWA decides it is not in favor of the Lease Agreement. Mr. Carcieri stated that the Department would then come back to the Committee, with the documents being held in escrow, and inform the Committee as to the FHWA's position. Mr. Woolley asked what other restaurants Mr. Izzo has an interest in that would enjoy use of the parking lot. Mr. Celeste stated that to his knowledge, there are no other restaurants in the area in which Mr. Izzo has an interest that would utilize said parking lot. Mr. Woolley noted that the Lease Agreement does not require that parking under the highway have anything to do with the restaurant. Mr. Celeste indicated it does not have any such requirement. Mr. Woolley asked if Mr. Izzo has contemplated charging a fee for parking on the site. Mr. Wick indicated that Mr. Izzo is not allowed to operate the site as a concession. Mr. Woolley asked Mr. Wick if that is his interpretation of the Lease Agreement. Mr. Wick indicated that is his interpretation of the Agreement. Mr. Celeste, counsel for Mr. Izzo, also stated that his interpretation of said language does not permit his client to charge a fee for parking. Mr. Kay asked how long the documents will be held in escrow. Mr. Celeste indicated that the release of the documents will occur when Chestnut Properties' financial obligation to Mr. Izzo is fulfilled and when the aforementioned requirements are satisfied. Mr. Wick stated that once the Department provides the required thirty (30)



day notice to the former owners and Chestnut Properties satisfies its financial obligation to Mr. Izzo, the escrow account will terminate and the lawsuit will be dismissed. Mr. Woolley clarified for the record that it is his understanding that Mr. Izzo is the sole owner/member of Capitol City Events, which is a limited liability company and therefore, the intent is that the his insurance coverage will protect the State of Rhode Island in the event there is any sort of incident associated with the bridge and/or on site parking which could generate a lawsuit against the State of Rhode Island. Mr. Wick indicated that Mr. Woolley's statement is correct and noted that proof of liability insurance coverage in the amount of \$2,000,000 will be submitted. Mr. Woolley asked what portion of the day the parking lot is most utilized by Mr. Izzo's patrons. Mr. Celeste indicated that the typical business hours are from after noon until the evening. Mr. Carcieri indicated that the Department was very diligent concerning that issue and received Mr. Celeste's representation that the use of the parking lot is from noon until very late in the evening to ensure that parking spaces would not be left available to other vehicles during the daytime hours. A motion was made to approve by Mr. Ryan and seconded by Mr. Woolley.

Under discussion, Mr. Ryan stated that he made the motion to approve the request based upon Mr. Wick's representation that the State of Rhode Island's exposure could be as much as \$600,000 for costs incurred by Mr. Izzo, and that this settlement appears to be in the State's best interest. Mr. Wick commented that as Mr. Izzo has a recorded Lease Agreement, it is his legal opinion that the State of

**Rhode Island is without a plausible defense. Mr. Wick explained that at the closing of the property, the title insurance policy specifically noted the recorded Lease Agreement and excluded it from coverage, which resulted in the issue becoming the burden of the Department of Transportation. Mr. Woolley explained that it is the Department of Attorney General's position that all information concerning the necessity of this Lease Agreement be divulged and made part of the record for the benefit of the public so that they may be able to understand why it was necessary to resolve this situation in this manner. Mr. Woolley commended Mr. Wick's effort relative to the settlement of this matter and agrees that a compromise is in the best interest of the public and the State of Rhode Island given the circumstances of the dispute. The motion passed with three (3) votes "Aye" and one (1) vote "Nay."**

**Three (3) Votes "Aye"**

**Mr. Woolley**

**Mr. Ryan**

**Chairman Griffith**

**One (1) Vote "Nay"**

**Mr. Kay**

**ITEM B – Department of Environmental Management – A request was made for signatures on a revised Warranty Deed relative to 40 acres**

of property located on Skunk Hill Road in the Town of Hopkinton. Ms. Sheehan explained that the subject Warranty Deed was initially approved by the State Properties Committee in September 2009. Ms. Sheehan indicated that prior to the closing on the property one of the co-grantors passed away and the Department was legally required to prepare a new Warranty Deed, which omitted the name of the deceased co-grantor. Ms. Sheehan presented a site map and explained that the subject property abuts the Arcadia Management Area and provides some access onto Skunk Hill Road as well. Chairman Griffith asked if all other terms and conditions of the Warranty Deed remain the same. Ms. Sheehan noted that the Warranty Deed is identical to the original save the omission of the name of the deceased co-grantor. Therefore, the Department is seeking approval of the revised Warranty Deed.

A motion to approve was made by Mr. Woolley and seconded by Mr. Ryan.

**Passed Unanimously**

**ITEM C – Department of Environmental Management – A request was made for conceptual approval to survey, title search, and negotiate the purchase of 5.5 acres of land located on Willie Woodhead Road in the Town of Glocester. Ms. Sheehan stated that the subject property is located in the Durfee Hill Management Area and abuts the Purvis Property, which the Department purchased last year. This acquisition will further solidify the Department's boundary line on Willie Woodhead Road. Mr. Kay asked what the source of the funding for this acquisition is. Ms. Sheehan indicated that the funding will come**

from the Open Space Bond Program if said acquisition is finalized. A motion was made to approve by Mr. Ryan and seconded by Mr. Woolley.

**Passed Unanimously**

**ITEM D – Department of Environmental Management – A request was made for conceptual approval to survey, title search, and accept the donation of thirty-eight (38) acres of land in the Town of Burrillville. Ms. Sheehan explained that the property owner is a resident of Massachusetts and no longer has any use for the property. The Department has learned that rare species habitat on the subject property and wishes to protect the land and its inhabitants permanently. A motion was made to approve by Mr. Kay and seconded by Mr. Ryan.**

**Passed Unanimously**

**ITEM E – Department of Transportation – A request was made for approval of and signatures on a Property Access Agreement in conjunction with ongoing construction of the Replacement of Warren Bridge. By way of background, Mr. Kalunian explained that the Department of Transportation executed and entered into a Temporary Easement Agreement with Narragansett Electric Company in conjunction with construction activity at the Warren Bridge, which spans between the Towns of Barrington and Warren. Mr. Kalunian believes the subject property is the former American Tourister site. The Department set up a staging area behind some buildings owned by Narragansett Electric Company. The Narragansett Electric Company used the property occasionally for the storage of materials**

and in the event of large power outages the property was utilized for the transport of equipment by large vehicles. Mr. Kalunian stated that on two (2) occasions, the Department entered into quite lengthy temporary easement agreements, for access over approximately 18,000 square feet of land located adjacent to the approach of the roadway. Mr. Kalunian indicated that said arrangement worked out quite well, until Narragansett Electric Company demolished several buildings in the immediate vicinity simultaneously with the Department's opening of the Warren Bridge to commuter traffic. Mr. Kalunian indicated that due to the curvature of the road, there was concern that some of the newly installed sidewalks and curbing may be damaged. Therefore, the Department's Construction Office asked the Real Estate Office to secure some type of access agreement with Narragansett Electric Company to utilize approximately 5,084 square feet of property exclusively for the purpose of entering and exiting the property. The Department attempted to obtain access to the additional property via a two page amendment to the Easement Agreement, but after approximately two (2) months, National Grid/Narragansett Electric responded with the Property Access Agreement before the Committee today. Mr. Kalunian noted that said Agreement has been reviewed and approved by the Department's Legal Division. The Department does not anticipate that said Access Agreement will be necessary beyond the beginning of next year. Mr. Griffith noted that there is no monetary compensation associated with the subject Property Access Agreement. Mr. Kalunian noted that there was some discussion regarding compensation; however,

**Narragansett Electric Company recognized that the amount of compensation would have been so insignificant, it generously agreed to a gratis Access Agreement. A motion was made to approve by Mr. Woolley and seconded by Mr. Kay. The motion passed with three (3) votes “Aye” and one (1) recusal.**

**Three (3) Votes “Aye”**

**Mr. Woolley**

**Mr. Kay**

**Chairman Griffith**

**One (1) Recusal**

**Mr. Ryan**

**ITEM G – Department of Transportation – A request was made to clarify the municipalities which are involved in the Rhode Island Freight Rail Improvement Project Land and Permanent Easements. Mr. McCarthy explained that previously on October 27, 2009, he appeared before the State Properties Committee seeking conceptual approval to transfer certain parcels of land that the Department of Transportation had acquired in fee simple as well as certain easements to the National Railroad Passenger Corporation (“Amtrak”). Mr. McCarthy reminded the Committee that said parcels were necessary for drainage, retaining walls and sloping to accommodate the new freight rail equipment traveling from Central**

Falls to Quonset as part of the Freight Rail Improvement Project. At that time, the body of the submission memorandum stated that the parcels were located within the Central Falls/Quonset area; however, the reference line suggested that the parcels were located in the City of Warwick only. Therefore, for clarification Mr. McCarthy stated that he is once again seeking conceptual approval to finalize the documents and transfer the subject parcels actually located in Providence, Cranston, Warwick, East Greenwich and North Kingstown to Amtrak. Chairman Griffith asked if any of the parcels of land were located in Central Falls. Mr. McCarthy clarified that the Freight Rail Improvement Project encompassed freight rail from Central Falls to Quonset; however, the actual parcels and easements to be transferred are located within all of the aforementioned municipalities. Mr. Ryan noted that the submission memorandum states that the land was acquired for the construction of retaining walls and for sloping, while the easements were necessary for the construction of storm drains and other drainage structures not essential to Department of Transportation operations; therefore, Mr. Ryan asked whether the Department needs access to said parcels of land. Mr. McCarthy indicated that the language contained in the documents transferring said parcels of land to Amtrak stipulates that Amtrak will now be solely responsible for the repair and maintenance of the same. Mr. McCarthy explained that the Federal Government refers to this language as “cost avoidance” and completely supports this

transaction. A motion was made to approve by Mr. Ryan and seconded by Mr. Kay.

**Passed Unanimously**

**ITEM H – Department of Transportation – A request was made for approval of and signatures on a License Agreement by and between Gingers Oil Company, Inc. for use of property located at 110 Oak Street in the Town of Westerly. Mr. Coppotelli explained that Gingers Oil Company approached the Department and expressed interest in entering into a Sign License Agreement for the use of approximately two hundred (200) square feet of State-owned land for the purpose of maintaining their existing signage. Mr. Coppotelli stated that the Sign License Agreement is for a term of five (5) years and is revocable at will. A fee of \$600.00 per year has been assessed and at the expiration of the third year, the fee will be re-evaluated. By way of background, Mr. Coppotelli indicated that the Department of Transportation was doing work in the area and a consultant identified the signs as an encroachment on State-owned land. The Department immediately contacted Gingers Oil Company, Inc. and gave them the option of either relocating their signs onto their own property, or entering into a license agreement with the Department. Gingers Oil Company, Inc. made the decision to enter into the subject License Agreement. Mr. Coppotelli presented a site map of the subject property for the Committee's review. Mr. Coppotelli stated that only the base of one sign was actually encroaching on State-owned property by 3 ½ feet. The second sign actually overhangs State-owned property by less than ½ foot; however, the property**



liability insurance is in place. Chairman Griffith asked if the Department has any idea how long the encroachment existed before coming to the attention of the Department. Mr. Coppotelli indicated that Gingers Oil Company has been at the present location for approximately four (4) years; however, the Department has no way of determining when the signs were erected. Mr. Ryan asked if perhaps the Department could approach Gingers Oil Company about purchasing the property outright. Mr. Coppotelli indicated that the Department is not interested in selling said property at this time. Mr. Woolley indicated that he considers the nature of this encroachment rather insignificant as opposed to other encroachments involving the unauthorized paving and stripping of State-owned property for vehicle parking and on that basis made a motion to approve, which was seconded by Mr. Ryan.

#### **Passed Unanimously**

**ITEM I – Department of Transportation – A request for approval of and signatures on a Temporary Use Agreement by and between WP Woonsocket Associates, LLC relative to the Improvements to Diamond Hill Road Project. Ms. Kerr respectfully requested that this item be deferred as Mr. Woolley was kind enough to bring a potential problem concerning language contained in the indemnification clause of the Temporary Use Agreement to the Department's attention. Item I is deferred to a future meeting of the State Properties Committee at the request of the Department of Transportation.**

**ITEM J – The Department of Education – A request for conceptual approval for the acquisition of property for the new Met School in the**

**City of Newport.**

**Chairman Griffith stated that as a representative of the Department of Education has failed to appear to present Item J, said item is also deferred to a future meeting of the State Properties Committee.**

**Passed Unanimously**

**The Committee moves to go into Executive Session, pursuant to Rhode Island General Law 42-46-5(a)(5) for the specific purpose of discussion or consideration related to the acquisition or lease of real property for public purpose, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.**

**A motion was made to enter Executive Session by Mr. Ryan and seconded by Mr. Kay.**

**A roll call vote was taken and the votes were as follows: Mr. Kay voted "Aye", Mr. Woolley voted "Aye" Mr. Ryan voted "Aye" and Chairman Griffith voted "Aye".**

**The State Properties Committee closed the Executive Session and returned to**

**the open session of the meeting at 10:56 a.m.**

**ITEM E1 – Department of Transportation – A request was made for approval to obtain Temporary Easements by Agreement for the Improvements to I-195 (Contract Highway Demolition.) After a discussion in Executive Session, a motion was made to approve by**

**Mr. Woolley and seconded by Mr. Ryan.**

**Passed Unanimously**

**ITEM E2 – Department of Transportation – A request was made for approval to acquire the right of way necessary to construct Improvements to Route 3 (Tiogue Avenue) in the Town of Coventry. After a discussion in Executive Session, a motion was made to approve by Mr. Woolley and seconded by Mr. Ryan. Passed**

**Unanimously**

**A motion to seal the minutes of the Executive Session until such time as said matter is resolved was made by Mr. Woolley and seconded by Mr. Ryan.**

**Passed Unanimously**

**There being no further business to come before the State Properties Committee,**

**the meeting was adjourned at 10:58 a.m. A motion to adjourn was made by Mr. Woolley and seconded by Mr. Kay.**

**Passed Unanimously**

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**Holly Rhodes, Executive Secretary**  
**State Properties Committee**